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7	Attorneys for Complainant		
8	BEFORE THE BOARD OF REGISTERED NURSING		
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
10			
11	In the Matter of the Accusation Against: Case No. 2010 - 331		
12	SELMA S. BEMISTER, a.k.a. SELMA S. SAENZ, a.k.a. SELMA SAENZ BEMISTER  A C C U S A T I O N		
13			
14	118 Armstrong Avenue Dumas, TX 79029 Registered Nurse License No. 587518		
15			
16	Respondent.		
17	Complainant alleges:		
18	<u>PARTIES</u>		
19	1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her		
20	official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"),		
21	Department of Consumer Affairs.		
22	2. On or about September 19, 2001, the Board issued Registered Nurse License Number		
23	587518 to Selma S. Bemister, also known as Selma S. Saenz and Selma Saenz Bemister		
24	("Respondent"). The registered nurse license was in full force and effect at all times relevant to		
25	the charges brought herein and will expire on June 30, 2011, unless renewed."		
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## STATUTORY AND REGULATORY PROVISIONS

- 3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.
  - 5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- (a) Unprofessional conduct, which includes, but is not limited to, the following:
- (1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions . . .
- 6. California Code of Regulations, title 16, section ("Regulation") 1442 states:

As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

## **COST RECOVERY**

7. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

# FIRST CAUSE FOR DISCIPLINE

### (Gross Negligence)

8. At all times relevant herein, Respondent was employed as a traveling nurse by World Health Staffing, Inc. In or about January 2004, Respondent was assigned to work as an

emergency department ("ED") staff nurse at Mercy General Hospital, Sacramento, California (hereinafter "Mercy").

- 9. On or about March 19, 2004, at approximately 0202 hours, paramedics with the City of Sacramento Fire Department found C. R., a 24 year old female, in a motel room, lying supine on the bed following an assault. C. R. had reportedly been struck in the face several times, had marks to her trachea, and appeared to have been choked. The paramedics started an IV and noted that C. R. was hypotensive and acting erratically.
- 10. At approximately 0255 hours, C. R. arrived at Mercy. The paramedics reported to Respondent, who was on duty in the ED, that C. R. had been assaulted, was complaining of being paralyzed, and had neck pain. Respondent documented in the ED Record that C. R. had a score of 14 on the Glasgow Coma Scale (indicating that the patient was confused), and that C. R. had neck pain and dried blood on her lips and face. Respondent assessed C. R.'s extremities and noted that C. R. "moves all extremities equal." Respondent noted further that C. R. had no sensation to her bilateral lower extremities.
- 11. At approximately 0355 hours, another nurse documented in the ED Record that C. R. was undressed and had been placed in c-spine precautions<sup>1</sup>, and that the patient had no movement in her right arm/leg, diminished reflexes, and redness around her neck consistent with strangulation.
- 12. At approximately 0552 hours, an x-ray of C. R.'s cervical spine revealed anterior subluxation at the C5-6 with facet joint dislocation and probable associated posterior element fractures. At approximately 0734 hours, C. R. was intubated and mechanically ventilated to maintain her airway. C. R. began to exhibit signs of respiratory distress, and was reported to be diaphoretic, with accessory muscle use, gasping, and a pulse oximetry of 89%. At approximately 0900 hours, C. R. was transferred to UC Davis Medical Center via critical care support.
- 13. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a)(1), on the grounds of unprofessional conduct, in that on or about March 19, 2004,

<sup>&</sup>lt;sup>1</sup> C-spine precautions, including hard cervical collar, keep the cervical spine immobile, especially when the patient is rolled or moved.

Respondent was guilty of gross negligence in her care of C. R. within the meaning of Regulation 1442, as follows:

- a. Respondent failed to stabilize C. R.'s cervical spine with a firm cervical collar or initiate any c-spine precautions for the patient despite the fact that the patient had reportedly been assaulted and was complaining of being paralyzed, and despite Respondent's own assessment that the patient had no sensation to her bilateral lower extremities.
  - b. Respondent failed to report her findings or assessment as above to the ED physician.
- c. Respondent failed to undress C. R. so that a full secondary survey could be performed of the patient.
- d. Respondent failed to assess and/or monitor C. R.'s airway, failed to assess C. R.'s respiratory status (other than taking her vital signs), including an assessment of changes in the patient's voice quality or pain with swallowing, edema of the neck, or crepitus (air leaking into subcutaneous tissue), and failed to determine whether the patient had any point tenderness of the neck.
  - e. Respondent failed to perform any interventions to enhance C. R.'s respiratory status.

# SECOND CAUSE FOR DISCIPLINE

### (Unprofessional Conduct)

- 14. Complainant incorporates by reference as though fully set forth herein the allegations contained in paragraphs 8 through 12 above.
- 15. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), in that on or about March 19, 2004, Respondent committed acts constituting unprofessional conduct in her care of patient C. R., as set forth in paragraph 13 above.

#### **PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

Revoking or suspending Registered Nurse License Number 587518, issued to Selma
 Bemister, also known as Selma S. Saenz and Selma Saenz Bemister;

1	2.	Ordering Selma S. Bemister, also known as Selma S. Saenz and Selma Saenz
2	Bemister,	o pay the Board of Registered Nursing the reasonable costs of the investigation and
3	enforceme	nt of this case, pursuant to Business and Professions Code section 125.3;
4	3.	Taking such other and further action as deemed necessary and proper.
5		
6	DATED: _	1/13/10 Louise K. Bailey
7		LOUISE R. BAILEY, M.ED. RAN Interim Executive Officer
8		Board of Registered Nursing Department of Consumer Affairs
9		State of California  Complainant
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Accusation